



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Virginia Law Register

VOL. 8, N. S.]

MAY, 1922.

[No. 1

THE AFTERMATH OF THE EIGHTEENTH AMENDMENT.

Two fundamental truths, of vital import in the making of laws, may be based upon the lessons to be drawn from history, the experience of mankind under the restraint of law. These are that any law to be effectually enforced in any community must have the moral support of the majority of the people in that community, and that a law which attempts to regulate the private morals of the individual apart from his public duties and obligations as a citizen, not only cannot be effectually enforced but will inevitably lead to evils greater than those which it attempts to suppress. History is full of illustrations of these truths. Indeed it may almost be said that history, since the establishment of law, is a narration of the struggle of men to attain liberty of individual thought and action and governments have advanced or declined in civilization and culture just in the proportion in which they have developed or restrained that liberty. An excellent illustration of this truth is found in the results of the reign of the Puritans in England. They, after liberating the people from the oppression of Charles the First, destroyed all that they had accomplished and retarded for more than fifty years the development of democratic institutions by an oppression more intolerable than the one they had overthrown, an attempt by law to govern the consciences of men. Macaulay who greatly admired the Puritan leaders and detested the Stuarts, thus describes the results of that attempt:

“We are by no means unmindful of the great debt which mankind owes to the Puritans of that time, the deliverers of England, the founders of the American Commonwealths. But in the day of their power, those men committed one great fault, which left deep and lasting traces on the national character and manners. They mistook the end and overrated the force of government. The saints were to inherit the earth. The theatres were closed. The fine arts

were placed under absurd restraints. Vices which had never before been even misdemeanors were made capital felonies. It was solemnly resolved in parliament 'that no person shall be employed but such as the House shall be satisfied of his real godliness.' * * * It is quite certain that even if the royal family had never returned, even if Richard Cromwell or Henry Cromwell had been at the head of the administration, there would have been a great relaxation of manners. Before the restoration many signs indicated that a period of license was at hand. The political counter-revolution assisted the moral counter-revolution, and was in turn assisted by it. A period of wild and desperate dissoluteness followed. Even in remote manor-houses and hamlets the change was in some degree felt; but in London the outbreak of debauchery was appalling. * * * The nation resembled the demoniac in the New Testament. The Puritans boasted that the unclean spirit was cast out. The house was empty, swept, and garnished; and for a time the expelled tenant wandered through dry places seeking rest and finding none. But the force of the exorcism was spent. The fiend returned to his abode; and returned not alone. He took to him seven other spirits more wicked than himself. They entered in, and dwelt together; and the second possession was worse than the first."

We are living in a more enlightened age than that of Charles the Second and have attained a higher degree of self restraint than was possessed by Englishmen of the seventeenth century, but can any unprejudiced observer fail to see that we are, in a modified degree, experiencing a similar reaction. For a few months after the federal prohibition law went into effect there was apparently less drunkenness in the country. This may have been partly due to an effort on the part of some men to obey the law, but, to a much greater extent, was due to the difficulty at that time of obtaining liquor. The illicit distilling and bootlegging industries were in their earliest stages of development. Since then there has been a steady increase in the sale and consumption of intoxicating liquors and in resulting drunkenness. But this is not the only, or the worst evil that has resulted from the prohibition law. The evil spirit has returned with other spirits more evil than himself. A class of criminals that were previously confined to a few thinly settled communities are now to be found in vast numbers in our cities and towns, and there is hardly a country cross-roads at which one of them does not ply his trade. They have developed an industry that is one of the greatest and

most profitable in existence. The profits are so great and the chance of detection and conviction have proven to be so slight that this industry is attaining greater proportions every day. This crime is encouraged and participated in, directly or indirectly, by a large proportion of the leading men in every community; lawyers, physicians, bankers and merchants give it their sanction by dealing with those engaged in perpetrating it. The men who thus encourage the violation of the prohibition law are not doing what they consider an evil or unjustifiable thing. The great majority of them are moderate drinkers and they regard the law as an unwarranted and oppressive interference with their personal liberty, an attempt to put the stigma of crime upon what they consider as entirely innocent habits and customs and to force obedience to a moral code to which they are unwilling to conform. Whether fallacious or not, this mode of reasoning is inherent in the human mind, and the evil effects that might result from it should have been deeply pondered by voters and legislators before giving their sanction to legislation which brought those effects into operation. For it is not only, or chiefly, the effect that this violation of the prohibition law has upon men of high standing in the community that is to be considered. That effect is deplorable enough, for no man can violate any law, no matter how unjust he may consider it, without a slight deterioration of his moral fibre and a tendency, perhaps not recognized by himself, to regard other laws with less respect. But the greater evil is the effect that the action of such men has upon other men; men who are uneducated or imperfectly educated and incapable of analyzing moral questions. A young man of an adventurous nature but without any criminal tendencies, who in the ordinary course of events would "sow his wild oats" in a harmless way and become an entirely respectable citizen, hears of the large profits that are being made in the sale of illicit whiskey, and is informed that Mr. A., a prominent lawyer, and Mr. B., a highly respected merchant, and other men of high standing in the community are buying it. He thinks that there cannot be anything very wrong in a business that is patronized by such men. He becomes a boot-legger; is arrested, convicted, and sent to jail or the penitentiary. There he is perverted by association with hardened criminals and comes out at the end of his term ripe for

a career of crime. But assume that he escapes this contamination and leaves prison with the determination not to again violate the law. He finds that he is a marked man, an outcast, with no honest employment open to him, and so drifts back into his old employment, or perhaps, remembering alluring tales he has heard while in prison of rich hauls made by highway robbers or burglars, he joins some criminal gang. Can any one doubt that there are many cases of this kind. And what must be the effect upon newly arrived immigrants, who know nothing of our institutions, laws and customs, when they find that a large element in every community are engaged in the selling and buying of illicit liquor. Must it not be their impression that this is a lawless country and that the most profitable employment that can be found is in the violation of the law. Unquestionably the very large increase in robberies, burglaries and many other crimes, in all parts of the country, is in large measure due to prohibition and the attitude that a large proportion of the people have taken towards its enforcement; an attitude that may be deplorable, but which is entirely natural and should have been anticipated. What will be the result upon the health of the people of the drinking of bad and adulterated liquor and of deleterious drugs as substitutes is a question that cannot yet be fully answered, but there seems every reason to believe that it will be a very serious one. The evils resulting from the law are a tortuous chain in which new links are continually being forged. It is unfortunate that a direct expression of the will of the people could not have been obtained on the Eighteenth Amendment to the Constitution. When one considers the conditions existing at the time the federal constitution was formulated it is easy to understand why its founders feared to submit amendments to it to the direct vote of the people. Republics, so called, had existed before; but they had generally been governments by a distinctly limited class and, like the republic of Rome, had been more in the nature of oligarchies than democracies in the modern sense of that term. And at the time our federal government was established republics were looked upon as almost archaic. On the continent of Europe, except in one small country, Switzerland, absolute monarchy reigned supreme. In England the power of parliament, which had been steadily growing since the reign of James

the Second, had received a check, and the power of the crown seemed again to be in the ascendant. Popular government was everywhere distrusted. Small wonder then that the constitutional convention moved with caution and put restraints upon the direct expression of the popular will. They seem to have acted on the theory that the people, moved by radical agitators, would be apt to give their sanction to hastily considered and harmful measures and that their representatives in legislative assemblies would not be so open to such influences. Experience has shown that this theory was baseless. It has been proven that Congress and the legislatures of the states are quite as open to the influence of popular agitation as are the people and, what is a greater evil, are much more easily influenced to pass legislation in the interest of a particular class or a particular industry under the pressure of a lobby or through the corruption of individual legislators. It was this domination of the state legislatures by special interests and the election of United States Senators to represent those interests, rather than the interests of the people at large, that aroused the popular demand that resulted in the enactment of the amendment to the federal constitution providing for the election of Senators by the direct vote of the people and the passage of referendum laws by many state legislatures. The passage of the Eighteenth Amendment is an apt illustration of the way in which a single organization, the Anti-Saloon League, backed in many states by only a minority of the people, can dominate legislative action. The time that this organization selected to bring its forces into action was well chosen. We were in the midst of the greatest war of all times. The people were in a sacrificial mood. They responded as they never had before to every demand the government made upon them. They were ready to give, and did give, in time and labor and money to their utmost capacity. The Anti-Saloon League took advantage of this mood. It appealed to the people on the ground that prohibition was a sacrifice they were required to make in order to enable the government to bring the war to a successful conclusion. Many responded to this appeal. It is characteristic of the average human mind to be guided in its action by immediate existing conditions. A prospective mental vision is one of the rarest of human attributes. No doubt the incentive that led some to respond

to this appeal was the same that caused many primitive peoples, in times of great stress, to offer up their cattle and crops as a sacrifice to propitiate an offended deity.

Having by these methods acquired as large a support as possible, the league brought all its forces to bear upon Congress and the legislatures of the several states. Paid lobbyists were employed at Washington and in every state capitol, and every individual legislator was made to understand that if he did not support the League's measures it would use all its efforts to end his political career. This mode of influencing legislation can hardly be regarded as admirable from a moral viewpoint, and there can be little doubt that it has caused many men to violate the law with an easier conscience than they would have possessed had its enactment been brought about by more legitimate means.

WALTER CARRINGTON.

Charlottesville, Va.